

MEDICINE BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby proposes to amend Chapter 17, “Licensure of Acupuncturists,” Iowa Administrative Code.

The purpose of Chapter 17 is to establish licensure requirements for acupuncturists. The proposed amendments update requirements for licensure, renewal and reinstatement; provide definitions of additional terms associated with the practice of acupuncture; revise requirements for the display, distribution and retention of a disclosure sheet which contains information for patients; establish requirements for the delegation of certain aspects of treatment; and establish a requirement that licensees report changes in their full legal name.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on October 16, 2015.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on December 29, 2015. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to mark.bowden@iowa.gov.

There will be a public hearing on December 29, 2015, at 11 a.m. at the Board’s office, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

After analysis and review of this rule making, no impact on jobs in Iowa has been found.

These amendments are intended to implement Iowa Code chapters 147, 148, 148E, and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 653—17.2(148E) as follows:

653—17.2(148E) Licensure exceptions. In accordance with Iowa Code section 148E.3, the following rules ~~govern those persons engaged in the practice of acupuncture not in this chapter shall not apply to the following:~~

1. A person otherwise licensed by the state to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry who is exclusively engaged in the practice of the person’s licensed profession.
2. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board as one that leads to eligibility for licensure is not required to obtain a license.

ITEM 2. Amend rule 653—17.3(148E) as follows:

653—17.3(148E) Definitions.

“Accreditation Commission for Acupuncture and Oriental Medicine” or “ACAOM” means the United States-based accreditation commission that certifies acupuncture and oriental medicine training programs and colleges. The ACAOM oversees all professional oriental medicine and acupuncture degree programs in the United States. The ACAOM was formerly known as the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

“Acupuncture” means a form of health care developed from traditional and modern oriental medical concepts that employs acupuncture, oriental medical diagnosis and treatment, and adjunctive therapies

and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

“Acupuncture needle” means a solid-core instrument including but not limited to acupuncture needles, dermal needles, intradermal needles, press tacks, plum blossom needles, prismatic needles, and disposable lancets.

“Acupuncture point” means a specific anatomical location on the human body that serves as the treatment site for the use of acupuncture.

“Applicant” means a person not otherwise authorized to practice acupuncture under Iowa Code section 148E.3 who applies to the board for a license.

“Ashi acupuncture point” means an acupuncture point that is located according to tenderness upon palpation. An ashi acupuncture point is also known as a trigger point.

“Board” means the board of medicine established in Iowa Code chapter 147.

“Committee” means the license and examination licensure committee of the board with oversight responsibility for administration of the licensure of acupuncturists.

“Department” means the Iowa department of public health.

“Disclosure sheet” means the written information licensed acupuncturists must provide to patients on initial contact.

“Disposable needles” means presterilized needles that are discarded after initial use pursuant to Iowa Code section 148E.5.

“License” means a license issued by the board pursuant to Iowa Code section 148E.2.

“Licensed acupuncturist” or “licensee Licensee” means a person holding a license to practice acupuncture granted issued by the board under the provisions of pursuant to Iowa Code chapter 148E.

“Meridians” means connected points across the human anatomy that affect a specific organ or other part of the body.

“National Certification Commission for the Certification of Acupuncturists Acupuncture and Oriental Medicine” or “NCCAOM” means the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) United States-based commission that validates entry-level competency in the practice of acupuncture and oriental medicine through professional certification.

“Practice of acupuncture” means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.:

1. The stimulation or piercing of the skin with an acupuncture needle for any of the following purposes:

● To evoke a therapeutic physiological response, either locally or distally to the area of insertion or stimulation.

● To relieve pain or treat the neuromusculoskeletal system.

● To stimulate ashi points to relieve pain and dysfunction.

● To promote, maintain, and restore health and to prevent disease.

● To stimulate the body according to auricular, hand, nose, face, foot or scalp acupuncture therapy.

● To use acupuncture needles with or without the use of herbs, electric current, or application of heat.

2. The use of oriental medical diagnosis and treatment, including:

● Moxibustion, cupping, thermal methods, magnets, gua sha scraping techniques, acupatches, herbal poultices, hot and cold packs, electromagnetic wave therapy, light and color therapy, sound therapy, or therapy lasers.

● Massage, acupressure, reflexology, shiatsu and tui na massage, or manual stimulation, including stimulation by an instrument or mechanical device that does not pierce the skin.

● Herbal medicine and dietary supplements, including those of plant, mineral, animal, and nutraceutical origin.

3. Any other adjunctive service or procedure that is clinically appropriate based on the licensee's training as approved by NCCAOM or ACAOM.

"Professional development activity (PDA)" or "PDA" means any activity for the purpose of continuing a person's education that is defined and approved by NCCAOM. One PDA point equals one hour of continuing education.

"Service charge" means the amount charged by the board for making a service available online and is in addition to the actual fee for a service itself. For example, one who renews a license online will pay the license renewal fee and a service charge.

ITEM 3. Amend paragraph 17.4(1)"d" as follows:

d. Successfully complete a three-year postsecondary training program or acupuncture college program which is accredited by, in candidacy for accreditation by, or which meets the standards of, the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine the Accreditation Commission for Acupuncture and Oriental Medicine.

ITEM 4. Amend rule 653—17.5(147,148E) as follows:

653—17.5(147,148E) Application requirements.

17.5(1) Application for licensure. To apply for a license to practice acupuncture, an applicant shall:

a. Submit the completed application form provided by the board, including required credentials and documents, and a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant; and

b. No change.

c. Pay the fee identified in 653—paragraph 8.2(2)"f" "e" for the evaluation of the fingerprint packet and the DCI and FBI national criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

17.5(2) Contents of the application form. Each applicant shall submit the following information on the application form provided by the board:

a. The applicant's full legal name, date and place of birth, and home address, mailing address and principal business address;

b. No change.

c. A chronology accounting for all time periods from the date the applicant entered an acupuncture and oriental medicine training program or college to the date of the application;

d. The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice acupuncture, including license, certificate of registration or certification numbers, and date of issuance, and an explanation indicating the basis upon which authorization to practice acupuncture was received;

e. Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories. Copies of the legal documents may be requested if needed during the review process;

f. Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, acupuncture or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction;

g. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

h. The NCCAOM score report verification form submitted directly to the board by the NCCAOM;

~~g. i.~~ An official statement from NCCAOM that the applicant holds active status as a diplomate in NCCAOM or, after June 1, 2004, an official statement from NCCAOM that the applicant holds active status as a diplomate in acupuncture or oriental medicine;

~~h. j.~~ An official statement showing Proof of successful completion of a course in clean needle technique approved by the NCCAOM;

~~i. k.~~ A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of acupuncture and provide patients with safe and healthful care;

~~j. l.~~ A description of the applicant's clinical acupuncture training, work experience and, where applicable, supporting documentation;

~~m.~~ A copy of the applicant's acupuncture degree issued by an educational institution. If a copy of the acupuncture degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained an acupuncture degree from a specific educational institution;

~~n.~~ A complete translation of any diploma not written in English. An official transcript, written in English and received directly from the educational institution, showing graduation from an acupuncture training program or an educational institution is a suitable alternative;

~~o.~~ A sworn statement from an official of the educational institution certifying the date the applicant received the acupuncture degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained an acupuncture degree from a specific educational institution;

~~k. p.~~ An official transcript sent directly from ~~the institution of higher education or acupuncture school~~ an acupuncture training program or an educational institution attended by the applicant and, if necessary requested by the board, an English translation of the official transcript;

~~l. q.~~ Proof of the applicant's proficiency in the English language, when the applicant has not passed the English version of the NCCAOM written and practical examinations;

~~m.~~ A copy of the disclosure sheet to be used in practice, as described in 17.5(3); and

~~n.~~ A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

~~r.~~ Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board; and

~~s.~~ A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

17.5(3) Disclosure sheet. Pursuant to Iowa Code section 148E.6, applicants shall also provide a copy of the disclosure sheet to be given to each patient that includes the following information:

~~a.~~ The name, business address and business telephone number of the acupuncturist;

~~b.~~ A fee schedule;

~~c.~~ A listing of the acupuncturist's education, experience, degrees, certificates, or other credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain degrees or credentials, and experience;

~~d.~~ A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency;

~~e.~~ A statement that the acupuncturist is complying with statutes and with rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist;

~~f.~~ A statement that the practice of acupuncture is regulated by the board; and

~~g.~~ A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state, and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.

Reserved.

~~17.5(4)~~ *Application cycle.* Applications for initial licensure shall be open for 90 days from the date the application form is received in the board's office. If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

a. After the 90 days, applicants shall update credentials and submit a nonrefundable reactivation of application fee of \$100 unless granted an extension in writing by the committee or the board. The period for requesting reactivation of the application is limited to one year from the date the application form is received by the board. To reactivate the application, an applicant shall submit a nonrefundable reactivation of application fee of \$100 and shall update application materials if requested by the board. The period for requesting reactivation is limited to 90 days from the date the applicant is notified that the application is inactive, unless the applicant is granted an extension in writing by the committee or the board.

b. Once the application reactivation period is expired, applicants must reapply and submit a new, nonrefundable initial application fee of \$300 and a new application, documents and credentials.

~~17.5(5)~~ No change.

~~17.5(6)~~ *Licensure application review process.* The process below shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

a. No change.

b. After reviewing each application, staff shall notify the applicant about how to resolve any problems identified by the reviewer. An applicant shall provide additional information when requested by staff or the board.

c. No change.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and administration and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) and (2) No change.

e. and f. No change.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) ~~Grant a license;~~ If an applicant has not engaged in active practice in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

2. Successfully pass a competency evaluation approved by the board;

3. Successfully pass an examination approved by the board;

4. Successfully complete a reentry to practice program or monitoring program approved by the board;

(4) Issue a license;

~~(4)~~ (5) ~~Grant~~ Issue a license under certain terms and conditions or with certain restrictions;

~~(5)~~ (6) Request that the applicant withdraw the licensure application; or

~~(6)~~ (7) Deny a license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) ~~Grant a license;~~ If an applicant has not engaged in active practice in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;
2. Successfully pass a competency evaluation approved by the board;
3. Successfully pass an examination approved by the board;
4. Successfully complete a reentry to practice program or monitoring program approved by the board;

(4) Issue a license;

(4) (5) ~~Grant~~ Issue a license under certain terms and conditions or with certain restrictions;

(5) (6) Request that the applicant withdraw the licensure application; or

(6) (7) Deny a license. The board may deny a license for any grounds on which the board may discipline a license.

17.5(7) to 17.5(13) No change.

ITEM 5. Amend rule 653—17.6(147,148E) as follows:

653—17.6(147,148E) Display of license and disclosure of information to patients.

17.6(1) No change.

~~17.6(2) Approval of the disclosure sheet and time limit for revisions. Pursuant to Iowa Code section 148E.6, upon issuing a license, the board shall provide notification to the licensee of the approval or rejection of the disclosure sheet to be provided to patients on initial contact submitted subsequent to 17.5(4) "m."~~

~~a. If rejected, the board shall provide the licensee with a written statement explaining the reasons for rejecting the disclosure sheet submitted and indicating the necessary amendments or revisions.~~

~~b. Upon receiving the rejection, the licensee shall submit within 14 days a revised mandatory disclosure sheet to the board for its approval.~~

~~17.6(3) 17.6(2) Distribution and retention of disclosure sheet. The Pursuant to Iowa Code section 148E.6, the licensee shall distribute the a disclosure sheet on initial contact with patients and retain a copy, signed and dated by the patient, for a period of at least five years after termination of the treatment. The disclosure sheet shall include the following:~~

~~a. The name, business address, and business telephone number of the acupuncturist.~~

~~b. A fee schedule.~~

~~c. A listing of the acupuncturist's education, experience, degrees, certificates, or credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain the degrees or credentials, and experience.~~

~~d. A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency.~~

~~e. A statement that the acupuncturist is complying with statutes and rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist.~~

~~f. A statement indicating that the practice of acupuncture is regulated by the board.~~

~~g. A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.~~

ITEM 6. Amend rule 653—17.7(147,148E,272C) as follows:

653—17.7(147,148E,272C) Biennial renewal of license required. Pursuant to Iowa Code section 148E.2, a license is renewed every two years on ~~November 1~~ October 31 for a fee of \$300 ~~with documented evidence that the licensee has completed the 30 hours of continuing education required by the board.~~ Beginning June 1, 2004, renewal shall require evidence of the licensee's current active status as a diplomate in acupuncture or oriental medicine from NCCAOM.

17.7(1) No change.

17.7(2) *Prorated fees.* The first renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

17.7(3) *Renewal requirements and penalties for late renewal.* Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

a. Pursuant to Iowa Code section 147.10, application for renewal shall be made in writing to the board accompanied by the required fee at least 30 days prior to the expiration date. When online renewal is used, the licensee must complete the online renewal prior to midnight December 31 in order to ensure that the license will not become inactive. The license becomes inactive and invalid at 12:01 a.m. on January 1.

b. Upon receipt of the completed renewal application, staff shall administratively issue a two-year license that expires on October 31. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration.

~~*b. c.*~~ Every renewal shall be displayed in connection with the original certificate of licensure.

~~*e. d.*~~ A If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, a \$50 penalty shall be assessed for renewal in the grace period, a period up until January 1 when the license lapses if not renewed.

17.7(4) No change.

ITEM 7. Amend rule 653—17.8(147,272C) as follows:

653—17.8(147,272C) Reinstatement of an inactive license.

17.8(1) *Reinstatement requirements.* Licensees who allow their licenses to go inactive by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

a. Submit upon forms provided by the board a completed application for reinstatement of a license to practice acupuncture that includes. The application shall include the following information:

(1) The applicant's full legal name, date and place of birth, home address, mailing address, and principal business address.

~~(2) Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories. Every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.~~

~~(3) Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories. Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories. Copies of the legal documents may be requested if needed during the review process.~~

~~(4) A practice history for the period of the lapsed license. A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, acupuncture or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.~~

~~(5) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.~~

~~(6) Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.~~

~~(7) A chronology accounting for all time periods from the date of initial licensure.~~

(8) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

b. Pay \$400. Submit a completed fingerprint packet to facilitate a national criminal history background check. The \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

c. Provide evidence of successful completion of 60 PDA points. Pay the reinstatement fee of \$400 plus the \$45 fee identified in 653—paragraph 8.2(2) “e” for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

d. Provide an official statement from NCCAOM that the applicant holds current active status as a diplomate of NCCAOM. After June 1, 2004, provide an official statement from NCCAOM that the applicant holds active status as a diplomate in acupuncture or oriental medicine. Provide evidence of successful completion of 60 PDA points within the previous two years.

e. Provide an official statement from NCCAOM that the applicant holds current active status as a diplomate of NCCAOM. After June 1, 2004, provide an official statement from NCCAOM that the applicant holds active status as a diplomate in acupuncture or oriental medicine.

e. f. Meet any new requirements instituted since the license lapsed.

17.8(2) Reinstatement restrictions. Pursuant to Iowa Code section 272C.3(2) “d,” the committee may require a licensee who fails to renew for a period of three years from the expiration date an applicant who has not engaged in active practice in the past three years in any jurisdiction of the United States to meet any or all of the following requirements prior to reinstatement of an inactive license:

a. Provide a written statement explaining the reasons for failing to renew;

b. a. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

b. Successfully pass a competency evaluation approved by the board;

c. Appear before the committee or board for an interview. Successfully pass an examination approved by the board; or

d. Successfully complete a reentry to practice program or monitoring program approved by the board.

ITEM 8. Amend subrule 17.10(5) as follows:

17.10(5) Delegation of responsibilities prohibited. The licensee shall perform all aspects of acupuncture treatment on a patient. ~~Delegation of responsibility for acupuncture treatment is strictly prohibited.~~ that involve penetration of the skin of the patient. A licensee may delegate other aspects of treatment to staff and patients who are properly trained by the licensee. It is permissible for appropriately trained staff and patients to remove acupuncture needles from the patient’s body. The licensee is responsible for establishing and maintaining written training standards for staff.

ITEM 9. Adopt the following **new** subrules 17.10(6) and 17.10(7):

17.10(6) Change of full legal name. A licensee shall notify the board of any change in the licensee’s full legal name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

17.10(7) Deceased. A licensee file shall be closed and labeled “deceased” when the board receives a copy of the licensee’s death certificate.